

not accrue till the failure of the issue of tenant in tail, and the Statute runs only from that time; so that a remainderman may, notwithstanding an adverse possession of an estate for centuries against the tenant in tail and his issue, by which they were barred, (see *Martindale's lessee v. Troup*, 3 H. & McH. 594),⁴ bring an ejectment to recover the estate, at any time **451** within twenty years after *the failure of such issue, *Doe d. Taylor v. Horde*, 1 Burr. 60. And where a tenant in tail might have conveyed by an innocent conveyance, as by lease and release, it will not be presumed that he conveyed by fine or recovery, and the heir in tail need not rebut the presumption arising from possession, by shewing that his ancestor did not so convey, *Doe v. Pike*, 3 B. & Ad. 738. Lord Tenterden, indeed, remarked there, that where the ancestor has once entered and enjoyed the estate, the case does not fall within the express terms of the Statute, which bars all persons not *entering* within twenty years after their right or title shall first accrue.

But to bar the right of entry, the possession of the estate must be adverse.⁵ The books commonly divide possessions which are not adverse into three classes: 1°, where the parties hold under the same title; 2°, where the possession of one is consistent with the title of the other; and 3°, where the party has, in contemplation of law, never been out of possession. A few instances will be given of each.

1. Where parties hold under same title.—Where a younger son abates into lands after the death of the father before the entry of the eldest son, the law will intend that he entered claiming as heir to his father, by which

is determined. *Preston v. Evans*, 56 Md. 476; *Long v. Long*, 62 Md. 69; *Hanson v. Johnson*, 62 Md. 25; *Kopp v. Herrman*, 82 Md. 350; *Crean v. McMahon*, 106 Md. 507.

⁴ Twenty years adverse possession against the tenant in tail bars the entry of the issue in tail. *Wickes v. Wickes*, 98 Md. 307.

⁵ **What constitutes good title by adverse possession.**—To constitute a good title by adverse possession there must be: (1) Actual possession of the property claimed; (2) the possession must be adverse, i. e., it must be hostile, notorious, exclusive, peaceable and under claim of right; (3) the possession must have continued uninterruptedly for twenty years. *Beatty v. Mason*, 30 Md. 409; *Baker v. Swan*, 32 Md. 355; *Sadtler v. Peabody Co.*, 66 Md. 1; *Walsh v. McIntyre*, 68 Md. 418; *Winter v. White*, 70 Md. 305; *Bay v. Posner*, 78 Md. 42; *Merryman v. Cumberland Co.*, 98 Md. 228; *Sharon v. Tucker*, 144 U. S. 533.

As to entry to break an adverse holding, see *Carter v. Woolfork*, 71 Md. 290; *Schlossnagle v. Kolb*, 97 Md. 285; *Merryman v. Cumberland Co.*, 98 Md. 223; *Wickes v. Wickes*, 98 Md. 333. Cf. *Campbell v. Fletcher*, 37 Md. 430.

Where defendant in ejectment claims title by adverse possession to only a part of the land in question, defense should be taken on warrant. *Cadwalader v. Price*, 111 Md. 320; *Hackett v. Webster*, 97 Md. 405; *Newman v. Young*, 30 Md. 417. Where plaintiff establishes title by adverse possession to part of the land sued for he is entitled to recover as to such part. *Tome Institute v. Davis*, 87 Md. 591.